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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

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|------------------------------------|---|------------------------|
| THE BRICK SHIRT HOUSE, LLC, |) | |
| |) | Case No.: 1:15-cv-1919 |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| INDIANA ON TAP, LLC, |) | |
| |) | |
| Defendant. |) | |

COMPLAINT

COMES NOW, The Brick Shirt House, LLC, by counsel, and complains against Indiana on Tap, LLC as follows:

JURISDICTION AND VENUE

1. This action is instituted under 17 U.S.C. § 501 for a copyright infringement.
2. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 and 28 U.S.C. § 1338.
3. Venue is proper under 28 U.S.C. § 1391 in that the facts and claims alleged herein arose in and the location of the parties are in Marion County, Indiana, within the Southern District of Indiana, Indianapolis Division.

PARTIES AND RECITALS

4. Plaintiff The Brick Shirt House, LLC (“Brick Shirt House”) is an Indiana Limited Liability Company with its registered agent address at 5967 North Alton Ave, Indianapolis, IN 46228.
5. Brick Shirt House is managed by its member Alex Janeczek (“Janeczek”).

6. Brick Shirt House is engaged in the business of printing t-shirts, hats, mugs, cozies, and other apparel and merchandise (“BSH Merchandise”).
7. Indiana On Tap, LLC (“Indiana On Tap”) is an Indiana Limited Liability Company with its registered agent address at 11125 Windemere Blvd., Fishers, IN 46037.
8. Indiana On Tap is managed by its members Justin Knepp (“Knepp”), John Charles Hulls III (“Hulls”), James Roach (“Roach”), and Andrew Tolle (“Tolle”).
9. Infinity Logo Design was an online company providing crowd-sourced logo designs. The company is appears to be defunct.

FACTUAL ALLEGATIONS

10. On or about October 26, 2011, Janeczek’s visual art *Drink Indiana* was created, which features a beer mug in the shape of the state of Indiana, with foam spilling over from the top (“Drink Indiana Mug”). See **Exhibit 1** (Drink Indiana Mug).
11. On or about December 26, 2011, Janeczek started printing the Drink Indiana Mug on BSH Merchandise, most notably a t-shirt (“Drink Indiana Shirt”).
12. On or about May 1, 2012, the Drink Indiana Shirt was featured in the “2012 Indianapolis Monthly City Guide”.
13. On or about May 1, 2012, the Drink Indiana Shirt was featured in the “2012 Spring/Summer Indianapolis Visitor’s Guide” published by Visit Indy.
14. On or about December 1, 2012, the Drink Indiana Shirt was featured in the “December 2012 Indianapolis Monthly Indiana Pride Tee” competition.
15. On or about December 16, 2013, Janeczek transferred his copyright interest in the Drink Indiana Mug to Brick Shirt House.

16. On or about December 16, 2013, Brick Shirt House registered Drink Indiana Mug with the United States Copyright Office.
17. The Drink Indiana Mug is a registered copyright under registration number VA0001895289 and is protected since October 26, 2011. See **Exhibit 2** (Drink Indiana Mug registration information).
18. Since October 26, 2011, Brick Shirt House has either published or licensed for publication all copies of the Drink Indiana Mug in compliance with the copyright laws and has remained the sole owner of the copyright registered under registration number VA0001895289.
19. Brick Shirt House remains the sole owner of the Drink Indiana Mug copyright.
20. Since the creation of the Indiana beer mug artwork, Brick Shirt House has maintained a substantial market presence in the Indiana beer community, selling over 1,800 Drink Indiana Shirts or Drink Indiana related items between 2012 and 2015, with the same being worn and used by consumers and beer patrons at nearly every relevant greater-Indianapolis beer event.
21. On or about December 16, 2013, Janeczek discovered Indiana On Tap's logo.
22. Indiana On Tap's logo was substantially similar to Drink Indiana Beer Mug, as it copied, *verbatim*, the essential elements of Drink Indiana Beer Mug, prominently featuring a beer mug in the shape of Indiana, with foam spilling over the top ("Indiana On Tap Logo"), via Twitter. See **Exhibit 3** (Indiana On Tap Logo).¹
23. On or about December 16, 2013, Janeczek discovered Indiana On Tap's intent to distribute merchandise with the Indiana On Tap logo.

¹ At some point after this date, Indiana On Tap stopped using the Indiana On Tap Logo in question. See IndianaOnTap.com, available at <http://www.indianaontap.com/> (last accessed November 4, 2015).

24. On or about December 23, 2013, Brick Shirt House sent Indiana On Tap an e-mail requesting that they cease any use of the Indiana On Tap Logo, as it infringes on the Drink Indiana Mug artwork.
25. On or about December 29, 2013, after several emails exchanged with Indiana On Tap, Brick Shirt House ceased conversations with Indiana On Tap and sought legal counsel on the matter.
26. On or about February 1, 2014, Brick Shirt House had a booth display at the Brewers of Indiana Guild Winterfest.
27. At the Brewer's of Indiana Guild Winterfest, Janeczek was approached by Knepp and Hulls, who inquired about the Drink Indiana Mug design while wearing a t-shirt with the Indiana On Tap Logo printed thereon.
28. On or About July 7, 2014, Indiana on Tap advertised, via Twitter, their intent to sell t-shirts that incorporated the Drink Indiana Mug into what appeared to be an American Flag ("American Flag Mug Shirt"), debuting at the Brewers of Indiana Guild's Summer Brew Festival. See **Exhibit 4** (Twitter advertisement).
29. On or about July 17, 2014, Jeffery Gorham ("Gorham"), counsel for Brick Shirt House and Janeczek, sent a formal cease and desist demand ("C&D Demand") to Indiana On Tap, requesting that Indiana On Tap, among other things, cease and desist any infringing uses of the Drink Indiana Mug, including, but not limited to: use of the Indiana On Tap Logo, sales/marketing of the Indiana On Tap Logo merchandise, sales/marketing of the American Flag Mug Shirts, and any other infringing use of the Drink Indiana Mug, as well as a demand for damages in the form of attorney fees, disgorgement of ill-gotten gains from the sales of infringing

- merchandise, and destruction or surrender of any remaining infringing merchandise in Indiana On Tap's possession. See **Exhibit 5** (C&D Demand).
30. On or About July 17, 2014, Knepp, on behalf of Indiana On Tap, responded to the C&D Demand, refusing to comply and denying accusations.
31. On or about July 31, 2014, the Drink Indiana Mug Shirt was featured on Indianapolis Monthly "Us to a Tee: 54 Cool Indiana Shirts" in both print and online formats.
32. On or about August 8, 2014, Gorham sent a request for preservation of records ("Preservation Request") to Indiana On Tap and Infinity Logo Design.
33. On or about August 8, 2014, Knepp, on behalf of Indiana On Tap, responded to the Preservation Request, denying the existence of any pertinent records that would need to be preserved.
34. Infinity Logo Design never responded to the Preservation Request.
35. On or about April 11, 2015, Janeczek and Brick Shirt House sold its Drink Indiana Mug Shirts and other apparel at a booth at the Brewer's of Indiana Guild Bloomington Brew Fest, where Janeczek witnessed Indiana On Tap selling the Indiana On Tap Logo Shirts and American Flag Mug Shirts.
36. On or about May 12, 2015, Brick Shirt House received an email from Cory Huffman representing Indiana On Tap, inquiring as to purchasing a Drink Indiana Mug t-shirt, indicating that Indiana On Tap had shirts that were only for sale at live events. See **Exhibit 6** (Janeczek email).

37. On or about August 18, 2015, Indiana On Tap announces launch of their online store featuring apparel via Twitter. The shirt displayed was nearly identical to the American Flag Mug Shirt.
38. Upon information and belief, despite demands, Indiana On Tap willfully used Drink Indiana Mug or a substantially similar derivative thereof without permission or authorization from Brick Shirt House or Janeczek.
39. At all times relevant, Defendants had reasonable opportunity to view and copy the Indiana Beer Mug design, due to its substantial market presence in the greater-Indianapolis beer community.
40. At all times relevant, despite demands, Indiana On Tap willfully continued to use Drink Indiana Mug or a substantially similar derivative thereof without permission or authorization from Brick Shirt House or Janeczek.
41. At all times relevant, Indiana On Tap knew, or had reason to believe, that there was a strong or high likelihood that their actions constituted an infringement on Brick Shirt House's rights, especially after being notified of the registered copyright, yet willfully acted with this knowledge (or at least a reckless disregard of this knowledge).
42. Brick Shirt House or Janeczek has received no payment from Indiana On Tap for their use of the Drink Indiana Mug or a substantially similar derivative thereof.
43. Upon information belief, Indiana On Tap has realized and continues to realize profit or other benefits belonging to Brick Shirt House as a direct and proximate result of their infringing or otherwise unlawful conduct.
44. This profit or benefit is currently not capable of determination.

COUNT 1: COPYRIGHT INFRINGEMENT

45. Indiana On Tap's actions constitute a violation of Brick Shirt House's exclusive rights as owner of the Drink Indiana Mug copyright under 17 U.S.C. § 101 *et seq.*, including, but not limited to, Brick Shirt House's rights under 17 U.S.C. § 106.

RESERVATION OF RIGHTS

46. Brick Shirt House reserves the right to proceed with any and all claims which the facts averred in this complaint support, pursuant to the notice pleading requirement of F.R.C.P. 8.

WHEREFORE, Brick Shirt House, respectfully requests this Court to:

1. Enter judgment in favor of it on Count 1;
2. Declare that Indiana On Tap violated Brick Shirt House's rights under 17 U.S.C. § 101 *et seq.*;
3. Permanently enjoin Indiana On Tap (and all other persons or entities in active concert or participation with them) from infringing on Brick Shirt House's rights under 17 U.S.C. § 101 *et seq.* pursuant to 17 U.S.C. § 502;
4. Direct the impoundment of any and all items or copies that have been made or used to violate Brick Shirt House's rights under 17 U.S.C. § 101 *et seq.* pursuant to 17 U.S.C. § 503;
5. Order Indiana On Tap account to Brick Shirt House for all profits, gains, and benefits derived by them in infringing upon Brick Shirt House's rights under 17 U.S.C. § 101 *et seq.*;
6. Award Brick Shirt House actual and/or statutory damages pursuant to 17 U.S.C. § 504 and reasonable attorney's fees and costs pursuant to 17 U.S.C. § 505; and,

7. Award any such other relief as this Court deems just and proper under the circumstances.

Respectfully submitted,

s/ Alex Beeman

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